

THE UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS (Boston)

No. 1:23-cv-10511-WGY
Vol 1, Pages 1 - 82

UNITED STATES OF AMERICA, et al,
Plaintiffs

vs.

JETBLUE AIRWAYS CORPORATION, et al,
Defendants

For Bench Trial Before:
Judge William G. Young

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210
Monday, November 20, 2023

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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DR. GAUTAM GOWRISANKARAN (Continued.)

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E X H I B I T S

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1 P R O C E E D I N G S

2 (Begins, 9:00 a.m.)

3 THE COURT: Good morning. I apologize for how hot
4 it is here. And we're all ready to go.

5 And if you'd remind the witness.

6 THE CLERK: I'd like to remind you, sir, that you
7 are still under oath.

8 Do you understand?

9 THE WITNESS: Yes, I do.

10 MR. DUFFY: Your Honor, just two very quick
11 things. I guess three.

12 The binders that you requested for all the
13 exhibits admitted are over here and --

14 THE COURT: And Ms. Gaudet has spoken to me about
15 them. We'll take custody of them. And thank you.

16 MR. DUFFY: And if we may approach, we just have
17 the binder of the 1006 exhibits.

18 And then if the Court would like, we do have a
19 larger version of these slides. I know some of the data
20 slides are a bit small, so.

21 THE COURT: No, this is fine, the larger versions.
22 You've seen I've brought out my magnifying glass now.

23 (Laughter.)

24 THE COURT: I guess I'm a little confused here and
25 I speak to save time.

1 When an evidentiary issue was raised because of an
2 objection, I thought it would save time if we put the
3 issue to the end of this witness's testimony, and I
4 asked for all those exhibits that you wanted to get in
5 evidence through this witness. And I've -- actually you
6 gave me a lot of folders, but we've trimmed them down to
7 this packet of documents which I hold in my hand. And
8 while I haven't heard argument entirely, I had thought
9 that the reason for admitting these was under 1006.
10 That's the point on which I came on the bench. I don't
11 know what this is?

12 MR. DUFFY: It's just a binder of the same
13 materials, your Honor.

14 THE COURT: It's the same thing over again?

15 MR. DUFFY: With a few, um -- basically the
16 folders that you had on Friday are what has already been
17 testified to. The binder includes all of those plus
18 those that Dr. Gowrisankaran will be testifying about
19 today.

20 THE COURT: I understand. And thank you.

21 All right, you may continue.

22
23 DIRECT EXAMINATION BY MR. BATTAGLIA. (Continued.)

24 MR. BATTAGLIA: Ms. Afari, would you please pull
25 up Slide 84.

1 (On screen.)

2 Q. Good morning, Dr. Gowrisankaran. Welcome back.

3 A. Good morning.

4 Q. Doctor, when we left off Friday you had just
5 finished explaining the results of your Net Harm Model.
6 At a high-level can you please remind the Court of what
7 you mean by "net harm"?

8 A. Yes. So what I mean by "net harm" is the harm that
9 would accrue to consumers annually net of the gains from
10 taking the parties' efficiency, conversion efficiency
11 claim seriously, which is that they're going to -- in
12 the words of the parties, they're going to take the
13 Spirit claims and turn them into JetBlue claims. And so
14 the "net harm" that I'm calculating is the gross harm
15 from removing Spirit, but then adding back in the
16 benefit of the JetBlue Effect.

17 Q. And on Friday you testified that your Net Harm Model
18 gets credit to JetBlue being a stronger competitor as a
19 result of the proposed transaction. Can you explain
20 what you meant by that?

21 A. Yes, what I mean by that is that, um, what I did in
22 my net harm model is, um, in routes for instance where
23 Spirit and JetBlue both compete currently in what are
24 nonstop overlap routes, what I did is I allowed for
25 Spirit's capacity to become JetBlue's capacity. So in

1 those routes, um, what I specified is that Spirit is
2 a -- excuse me, JetBlue would be bigger, and they'd be
3 bigger by exactly the amount that Spirit currently
4 operates, and that extra size, that extra relative
5 capacity in my model would allow the JetBlue Effect in
6 those markets to be bigger than it currently is.

7 Q. So taking into account the additional capacity
8 JetBlue would have as a result of the transaction, does
9 your Net Harm Model find most consumers flying in
10 relevant markets will be better or worse off as a result
11 of the merger?

12 THE COURT: I don't understand the question.
13 Maybe I --

14 MR. BATTAGLIA: I'll rephrase, your Honor.

15 THE COURT: All right, thank you.

16 Q. So, Doctor, taking into account the additional
17 capacity JetBlue would have as a result of the
18 transaction, what does your Net Harm Model find with
19 respect to the effects of the transaction?

20 A. It finds that the transaction would result in
21 conservatively \$900 million in net harm annually. And
22 recall that I testified that I estimated my Net Harm
23 Model in two ways. One was the weighted-regression
24 model and that's the version that's more favorable to
25 defendants, that's where I get the \$900 million number

1 from, and the other is the unweighted-regression model
2 which I think is more accurate, and that's where I get a
3 larger number, I think it's \$2 billion in that harm to
4 consumers.

5 THE COURT: Tell me again -- and I'm slow, what is
6 the "net harm"?

7 THE WITNESS: Absolutely.

8 The "net harm," your Honor, is the extra prices
9 that consumers would pay as a result of this merger
10 assuming that JetBlue took all the Spirit planes and
11 operated them as JetBlue planes in the same markets.

12 THE COURT: Yes, I've been following that.

13 THE WITNESS: Uh-huh.

14 THE COURT: But as I've listened to the testimony
15 here, there's -- and I'm going to let your lawyer ask
16 you the questions in order. But they -- they, JetBlue,
17 has proffered various gates and, um, they're going to
18 dispense with various things on the theory that --
19 ultra-low-cost carriers are going to come in there, meet
20 that need, and in fact -- and you may disagree with
21 this, but in fact given JetBlue's competitive model,
22 vis-vis the legacy airlines, will be better off were
23 this to go forward.

24 You haven't gotten to dealing with those
25 contentions yet, is that right?

1 THE WITNESS: Your Honor, I'm not here to testify
2 about divestitures, the next witness, Dr. Chipty will
3 testify about divestitures.

4 THE COURT: Understood. All right, that answers
5 my question.

6 Go ahead.

7 MR. BATTAGLIA: Thank you, your Honor.

8 Q. And, Doctor, going back to your network model. To
9 the extent JetBlue does not continue flying all of the
10 JetBlue and Spirit planes in the same markets they fly
11 today, how would that affect your conclusion with
12 respect to the net harm?

13 A. Well it would make the net harm bigger. And so what
14 I did is I took the most favorable interpretation of the
15 -- to the defendants, which is to say that they're going
16 to operate all of the planes that Spirit operates in
17 these same markets, and I think as I testified on
18 Friday, that's not likely to be consistent with their
19 incentives. And so if they act in the ways that are
20 suggested by their incentives, which are to move some of
21 those planes out of the markets and not use them as
22 intensely as Spirit uses them, then the net harm would
23 be larger than the \$900 million that I outlined.

24 Q. Thank you, Doctor.

25 MR. BATTAGLIA: Slide 85, please.

1 (On screen.)

2 Q. So, Doctor, you just finished explaining why this
3 merger is likely to result in substantial harm to
4 consumers. Now I'd like to turn to some of the
5 disagreements between you and defendants' expert,
6 Dr. Hill, about how to assess the competitive effects of
7 this.

8 MR. BATTAGLIA: Slide 86, please.

9 Q. And, Dr. Gowrisankaran, how does your analysis of
10 this merger differ from Dr. Hill's approach?

11 A. Well Dr. Hill makes two key omissions throughout his
12 analysis and these are the same two omissions I
13 testified to at the beginning of my testimony on Friday,
14 which is that Dr. Hill ignores Spirit customers -- the
15 first of them is that Dr. Hill ignores Spirit customers
16 and the low prices they pay. So he focuses only on
17 rival prices.

18 So when he's looking to calculate his Net Harm
19 Model, his net harm, which is of course, um, prices,
20 based on prices, as I testified to the Court, he's only
21 looking at rivals' prices and he's not looking at
22 Spirit's own low prices. And he justifies that first
23 omission with inaccurate facts and an economic model
24 that I believe is inappropriate.

25 The second omission that Dr. Hill makes is that he

1 ignores nonstop overlap markets, these are markets where
2 Spirit and JetBlue compete head to head and where that
3 head-to-head competition would go away as a result of
4 this merger, if it were to go forward. And that's the
5 heart of this matter is these nonstop overlap markets.
6 So that's where head-to-head competition occurs in this
7 merger is where they compete over -- is where they
8 compete nonstop in the same markets. And so I think
9 it's not appropriate to just ignore that, that's the
10 biggest part of this merger.

11 Q. And, Doctor, are there any other ways in which you
12 and Dr. Hill disagree?

13 A. Yes, he makes, um, many other additional errors, and
14 he has a number of critiques of my analysis, but they're
15 largely immaterial to our findings, to the difference in
16 our findings.

17 What explains the differences in the findings
18 between me and Dr. Hill is these two effects and really
19 it's those two effects together that explain why I find
20 that this merger will likely result in net harm to
21 consumers and Dr. Hill finds that they would likely not
22 find or result in a net benefit to consumers.

23 MR. BATTAGLIA: Slide 87, please.

24 Q. Doctor, I'd like to take a closer look at those two
25 key admissions that you identified.

1 Doctor, what do you mean that Dr. Hill ignores
2 Spirit customers?

3 A. So what I mean is that my Net Harm Model is based
4 on, um, understanding what the prices that consumers pay
5 in those markets and how those are impacted by -- by the
6 relative capacity of entry, and when Dr. Hill calculates
7 prices, he simply ignores Spirit customers. And so I
8 illustrate that with the same demonstrative from
9 Dr. Hill's report that I talk about earlier --

10 And, your Honor, this is the Hartford-to-Miami
11 example.

12 And what I'm looking at to say what's the impact
13 of Spirit's entry on prices is all the prices in that
14 market? And so those are the four airlines that fly in
15 that market after Spirit's entry. And Spirit's prices
16 are much lower and that's going to mean -- and this is
17 pretty typical, and that's going to mean that the
18 overall average prices are lower.

19 What Dr. Hill is going to look at, when he
20 calculates net harm, is he's simply going to erase the
21 yellow line effectively and he's going to say "Let me
22 look at the prices of Spirit's rivals. So he's going to
23 look at what he marked as the dotted line in that
24 figure, which is just the average of Spirit's rivals,
25 and not account for the fact that Spirit's prices

1 themselves are lower, and that's the biggest benefit of
2 Spirit's competition is the prices that Spirit customers
3 themselves pay. Now Spirit has effects on other
4 airlines, but the biggest benefits is their own
5 customers.

6 Q. And, Doctor, what is your understanding of why
7 Dr. Hill ignores Spirit's customers and prices?

8 A. Well Dr. Hill gives two rationales behind why he
9 ignores Spirit's customers. The first is that he views
10 JetBlue as delivering more value to customers than
11 Spirit in general, and also with the Blue Basic product,
12 which as I testified is the one that competes most
13 heavily with Spirit. And he also gives a rationale, the
14 second rationale, that JetBlue, um, when it enters a
15 market that Spirit is operating on, affects Spirit's
16 prices more than Spirit affects JetBlue's prices, and he
17 thinks that this suggests that Spirit has lower value.

18 Q. I want your thoughts on these rationales?

19 A. Both rationales are invalid and they're invalid as a
20 matter of economics of whether these imply that Spirit
21 customers are better off paying more to fly JetBlue, and
22 also invalid as a matter of fact, that just the two
23 facts there are not true.

24 MR. BATTAGLIA: Slide 88, please.

25 Q. Doctor, what do you think of Dr. Hill's first

1 rationale for ignoring Spirit's customers and prices?

2 A. Well his first rationale, and I put in two quotes
3 from Dr. Hill's report there, so he has this viewpoint
4 that JetBlue and Blue Basic specifically deliver more
5 value to customers than Spirit. But what Dr. Hill
6 ignores in his -- as is evidenced by his quotes there,
7 is that he assumes that all customers are the same. And
8 what that really ignores fundamentally is that, um,
9 customers vary, individuals vary in their preferences.
10 Some people would rather fly Spirit and some people
11 would rather fly Blue Basic.

12 It's not -- as an economist, it's not up to me or
13 Dr. Hill to say which product is better just looking at
14 it, it's up to customers, and customers, um, they say
15 which product is better by what's called "revealed
16 preferences," by what they choose, and Dr. Hill just
17 ignores that, that individuals in many cases choose
18 Spirit Blue Basic, for instance.

19 MR. BATTAGLIA: Slide 89, please.

20 Q. Doctor, what do you think about Dr. Hill's claim
21 that JetBlue is higher quality than Spirit?

22 A. Well I think that Dr. Hill bases his claim on really
23 conflating the concept of quality with the concept of
24 bundling. And so I illustrate this with a figure from
25 Dr. Hill's report. And what the figure shows is, um,

1 what Dr. Hill views as JetBlue being higher quality for
2 a bunch of amenities, but the difference between Spirit
3 and JetBlue -- so Spirit offers most of these amenities,
4 it's just -- the difference is that it just doesn't
5 force customers to buy all of them.

6 So if you buy a Spirit ticket, then the customers
7 who want those amenities by and large can buy them, like
8 extra leg room seats or WIFI service, Spirit just
9 doesn't force customers who don't want them to buy them
10 as a cost of buying a Spirit ticket. And recall that I
11 testified on Friday that from Spirit's own documents,
12 most of its customers don't want things like WIFI, they
13 said they just had no need for that.

14 Q. And, Doctor, have you done any analyses to account
15 for bundling?

16 A. Yes, I did.

17 Q. And which analyses are those?

18 A. Well I did an analysis where I did my same Net Harm
19 Model, but instead of using the DB 1B data, that's the
20 Federal data, I used the data produced by the parties --
21 not just by the parties, but by major airlines in the
22 U.S., and what I did with those data is I added in all
23 the ancillary fees that airlines reported. And so I
24 calculated a full price measure that includes the basic
25 ticket price plus the reported ancillary fees. So if

1 people fly Spirit and they're paying for overhead bin
2 space, then that's in my Spirit price. And similarly
3 for JetBlue, whatever amenities people are picking on
4 JetBlue is in there.

5 And what I found is that even with my produced
6 ticket data, the net harm numbers, they're very similar
7 to my base numbers, and not only are they similar,
8 they're slightly higher. So my base net harm numbers
9 are 900 million annually to American consumers and with
10 the produced ticket data they're about a billion
11 dollars.

12 And the other analysis I did is I looked at my net
13 harm models from this analysis that I just discussed and
14 I said "How much value would Spirit passengers need to
15 place -- in these nonstop overlaps, how much value would
16 they need to place on the JetBlue product to offset the
17 net harm of about a billion dollars?" And when I did
18 this it turns out that the calculation says that each
19 Spirit passenger would have to place an average of \$115
20 each way on these JetBlue amenities to account for the
21 billion dollars in net harm, and that number is simply
22 too large to be credible. And so Spirit charges a lot
23 less for a whole bunch of its amenities together than
24 \$115, and many people decline all of those amenities,
25 and the majority of people decline to buy specific ones.

1 So there's, um -- it's just not credible that
2 people would be willing to spend \$115 extra each way for
3 these amenities that are bundled on Blue Basic, but not
4 on Spirit.

5 Q. So, Doctor, what did these analyses tell you about
6 Dr. Hill's rationale for ignoring Spirit's customers?

7 A. They tell me that this rationale is just not
8 accurate, that he's, um -- it's not appropriate to throw
9 out Spirit passengers and the low prices they pay just
10 because Dr. Hill views JetBlue or Blue Basic as a
11 superior product to Spirit.

12 Q. Thank you.

13 MR. BATTAGLIA: Slide 90, please.

14 Q. And, Dr. Gowrisankaran, have you done any analysis
15 of passengers choosing between Blue Basic and Spirit?

16 A. Um, yes, I did.

17 Q. And what analysis was that?

18 A. Well I wanted to not just -- when I looked at
19 Dr. Hill's report, I wanted to understand, to drill down
20 on this and say is Dr. Hill really right that if you do
21 a full apples-to-apples comparison, um, people prefer
22 Blue Basic to Spirit? And so what I did was I went to
23 the ticket data, the produced ticket data, and I said
24 let me try to identify instances when Spirit was more
25 extensive than Blue Basic? And so those are instances

1 when the reason to pick Blue Basic over Spirit does
2 not -- or to pick Spirit over Blue Basic does not come
3 down to being cheaper, Spirit's more expensive, and I
4 wanted to see is it always true that people pick Blue
5 Basic when you factor aside price?

6 And so I did that by looking at the data and
7 identifying those instances when Spirit is more
8 expensive than Blue Basic, and there aren't that many,
9 but there's still about 475,000 passenger choices, and I
10 picked of course the same origin and destination, but I
11 also looked at customers who are buying tickets for the
12 same day of travel and on the same day of purchase. And
13 by doing that what I did is it's -- it's as close to an
14 apples-to-apples comparison as you can get.

15 Q. And what did you find, Doctor?

16 A. What I found is that the blue and the yellow bars,
17 they're almost the same height, and what that tells me
18 is that even when you factor aside price -- so in these
19 -- for these passengers Spirit was actually more
20 expensive than Blue Basic. So factoring aside price,
21 almost half of passengers are willing to pick Spirit
22 over Blue Basic. So 225,000 are picking Spirit and
23 250,000 are picking Blue Basic. Very similar numbers.

24 Q. And, Doctor, what does this analysis tell you about
25 Dr. Hill's assumption that Spirit customers will be

1 unaffected switching to Blue Basic?

2 A. Well it tells me that a substantial number of Spirit
3 customers would be affected, that Dr. Hill is not right
4 to make that assessment. So if people are picking
5 Spirit and they're picking it even when it's more
6 expensive, in those rare times when it's more expensive,
7 then those people, and it's a substantial fraction of
8 people, they prefer Spirit to Blue Basic. And those
9 people, if Spirit were not in the market, would be
10 affected.

11 MR. BATTAGLIA: Slide 91, please.

12 Q. Doctor, how would this merger affect these customers
13 you've been talking about who prefer Spirit?

14 A. Well those customers would be harmed by the loss of
15 the Spirit product. And so I've just testified how as a
16 economist we think that there's a harm when people pick
17 a product and that product is no longer available, and
18 that's because what people do, choices and the decisions
19 they make, that's central to how we analyze competition
20 as economists.

21 And the horizontal merger guidelines, they really
22 agree with this idea, they really echo it, and I put a
23 quote from them here. And what it said is that if the
24 merged firm would withdraw a product that a significant
25 number of customers strongly prefer, then that can

1 constitute a harm to consumers over and above any
2 effects on the price or quality of any given product.

3 MR. BATTAGLIA: Slide 92, please.

4 Q. And, Doctor, what do you think about the second
5 rationale offered by Dr. Hill for ignoring Spirit's
6 customers and prices?

7 A. Well the rationale is Dr. Hill looks at the impact
8 of Spirit's entry on JetBlue and JetBlue's entry on
9 Spirit and compares them, and I thought that that
10 rationale, it didn't make a lot of sense to me from the
11 point of view of economics, and it's also wrong on the
12 facts.

13 And so focusing on the first point about whether
14 it makes sense as a matter of economics. If you want to
15 understand whether Spirit or JetBlue are a more
16 important competitor, what we should really do is
17 regress entry of Spirit or of JetBlue on market prices,
18 not on each other. So regressing them on each other, it
19 doesn't really tell us anything that's informative about
20 which is a better competitor. And Dr. Hill, um, I
21 didn't find a justification that I found convincing in
22 his report about this.

23 But even if Dr. Hill were right that this somehow
24 tells us that Spirit is a weaker competitor to JetBlue,
25 Dr. Hill is wrong on the facts, um, and that's because

1 he doesn't do an appropriate apples-to-apples comparison
2 here.

3 Q. Doctor, did you conduct any analysis of defendants
4 pricing effects on each other?

5 A. Yes, I did.

6 Q. And what analysis was that?

7 A. So this is what I'm showing on the right side of
8 this demonstrative, and what I did is I wanted to
9 understand what's the impact of Spirit on JetBlue prices
10 and of JetBlue on Spirit prices? And what I did to make
11 it apples-to-apples is I divided by the number of planes
12 at which Spirit enters or on which JetBlue enters. And
13 you recall that I testified on Friday that this is
14 important because when Spirit enters it typically enters
15 with fewer flights per day, so 1.7 flights per day for
16 Spirit versus 2.7 on average for JetBlue.

17 And so when I look at the impact of Spirit entry
18 on JetBlue prices -- that's the yellow bars, your Honor,
19 and I look at the impact of JetBlue entry on Spirit
20 prices, and I divide by how many flights a day Spirit
21 enters, the Blue and the yellow bars are pretty similar
22 to each other. In fact if we look at my unrated
23 specification, the one I think is more accurate, then
24 Spirit entry has a bigger impact on JetBlue prices.
25 Minus 8.2 percent is how much it lowers JetBlue's

1 prices. While JetBlue entry has a slightly smaller
2 effect of minus 7.7 percent on Spirit prices.

3 Q. Thank you.

4 MR. BATTAGLIA: Slide 93, please.

5 Q. Doctor, given that Dr. Hill ignores Spirit's
6 customers and prices, how then is he perceived to
7 analyze the likely effects of the merger?

8 A. Well what Dr. Hill does is he first, um, as you
9 asked, just eliminates Spirit prices and Spirit
10 customers and the low prices they pay, and he defines
11 this thing that he calls a "composition effect." And
12 these are not words that I would use to describe this,
13 but this is Dr. Hill's own words. But just to explain
14 what he did, so he said the "composition effect" is
15 Spirit's prices and he said "We can ignore them because
16 they're not reliable" for the two rationales he gave
17 earlier. And then what he said is he wanted to focus on
18 what he called the "competition effect." And he defines
19 the "composition effect" as the effect of Spirit's entry
20 or entry in general on rivals' average prices.

21 So again turning back to the Hartford-to-Miami
22 example, he's saying the composition effect is when
23 Spirit enters what happens to the other airlines, how
24 much do those airlines go down? But that's also not
25 appropriate because what that hides is that the mix of

1 customers on those other airlines changes after Spirit
2 enters.

3 So let's think about Spirit entering on the
4 Hartford-to-Miami route. So Spirit's going to attract
5 cost-conscious travelers on average. What's going to
6 happen to other airlines like say Delta on that route?
7 Well Delta is going to get more of the business
8 travelers. So because they're cost-conscious travelers
9 and many of them are going to Spirit, Delta's mix of
10 passengers afterwards is going to focus on the business
11 travelers, and because of that -- and business travelers
12 typically pay more than cost-conscious travelers, they
13 get more amenities for their fares, they might buy
14 walk-up fares, for instance, they're more likely to do
15 that, and so the average fare after and before Spirit
16 entry is not an appropriate mix because it's going to
17 reflect a different composition itself, it's going to
18 reflect more business passengers and fewer of the cost-
19 conscious travelers.

20 And Delta could see -- it might be that every
21 single group of customer on Delta is paying less, but
22 because there are more business travelers and fewer
23 cost-conscious travelers, those Delta fares might be
24 unchanged as a result of that. And so the bottom line
25 is that Dr. Hill's focus on looking at rivals' prices,

1 that's also not accurate.

2 Q. Now, Doctor, can you please remind us what prices
3 you use in your analysis of competitive effects?

4 A. What I used were market average prices. So I took
5 all the passengers that are flying on that route, I took
6 the total amount they paid, and I divided by the number
7 of passengers. And it doesn't matter which airline
8 they're flying on because Spirit competes with airlines
9 and Spirit itself is an important competitor to look at.

10 MR. BATTAGLIA: Slide 94, please.

11 Q. And, Dr. Gowrisankaran, you just explained that you
12 used market average prices to analyze the pricing
13 effects of entry by Spirit and JetBlue. How do
14 defendants analyze their own entry on this?

15 A. Well in looking at defendants' ordinary course
16 evidence and how they testified in trial, they do the
17 same thing. And so I was here for Mr. Hayes, the CEO --
18 the CO of JetBlue's testimony, and what Mr. Hayes talked
19 about, when he's talking about the JetBlue Effect, he
20 put up a demonstrative about the JetBlue Effect, um,
21 Boston to La Guardia, and what's in there is all prices,
22 it's not just the rivals to JetBlue. When he looks at
23 the JetBlue Effect, he's looking at market average
24 prices, just like I'm doing.

25 And on the right is an ordinary course document

1 from Spirit, and what Spirit looks at when they look at
2 how much they affect competition, when they want to
3 analyze the Spirit effect, they also look at market
4 average prices, they look at all fares, they don't just
5 look at their rivals' fares. And I read the testimony
6 of the CEO of Spirit, Mr. Christie, and when he was
7 talking about the Spirit effect, he also talked about
8 Spirit's effect on all market fares, not just on rivals'
9 fares.

10 Q. Thank you, Doctor.

11 MR. BATTAGLIA: And Slide 95, please.

12 Q. Now going back to Dr. Hill's analysis.

13 Did you analyze how the inclusion of Spirit's
14 customers and prices affect Dr. Hill's conclusions?

15 A. Yes, I did.

16 Q. And what did you find, Doctor?

17 A. What I found is that, um, this analysis -- so
18 Dr. Hill's eliminating Spirit passengers is really
19 crucial to his findings. And so I showed a
20 demonstrative on this from work I did in my rebuttal
21 reports based on analyses I did, and the first two bars,
22 the bars at the left that are in blue that say 193 and
23 1473, those are the net harm that I'm finding with my
24 two different specifications of weighted and unweighted,
25 and those include Spirit passengers, and these are only

1 -- these are in Spirit-only nonstop markets, this is not
2 yet considering the nonstop overlaps.

3 Now when I look at Dr. Hill's numbers, his report
4 -- and that's the right-most bar, your Honor, found that
5 there would be \$614 million in benefits to consumers in
6 these Spirit-only nonstop markets. But I took
7 Dr. Hill's, um, model and I adjusted it to just include
8 Spirit passengers and I did it two different ways, one
9 way that Dr. Hill did in his report, and another way
10 that they reported in the supplement to his report. And
11 whichever way you do it -- and those are the two green
12 bars, your Honor, the third and the fourth, what I find
13 is that even Dr. Hill's model, if you just include
14 Spirit's passengers and prices they pay, he finds that
15 there's net harm to consumers in these Spirit-only
16 nonstop markets.

17 MR. BATAGLIA: Slide 96, please.

18 Q. Now, Doctor, when discussing Dr. Hill's key
19 omissions, you said that he also ignores nonstop overlap
20 markets. Can you please explain how exactly Dr. Hill
21 ignores these markets?

22 A. Well Dr. Hill's reasoning here for excluding them to
23 me seems somewhat circular. So he designed a model that
24 he said is not reliable for analyzing nonstop overlaps,
25 and then he chooses in his, um, in his rebuttal report,

1 in his report to focus his analysis on markets where
2 JetBlue doesn't compete. And when I look at this
3 transaction, I see that the most important part of this
4 transaction is exactly the markets where Spirit and
5 JetBlue compete, that's where there's currently a
6 head-to-head competition between these two airlines and
7 that's where that competition would be lost as a result
8 of this merger.

9 MR. BATTAGLIA: Slide 97, please.

10 Q. So Dr. Hill claims that his model is not reliable
11 for analyzing nonstop overlaps.

12 Doctor, were you able to use Dr. Hill's model to
13 analyze harm in nonstop overlap markets?

14 A. Yes, I was.

15 Q. And what did you find?

16 A. Again I present five bars and the two left bars are
17 my harm numbers from nonstop overlap markets, and I
18 present them two ways, the weighted and the unweighted
19 harm, and that's where the bulk of the harm is. So \$751
20 million for my more conservative weighted regression
21 numbers.

22 And so I took Dr. Hill's model and I just applied
23 it to nonstop overlaps and what I find is that -- and I
24 did it in two ways, but it doesn't matter which way you
25 do it. Those are the two orange bars of 730 million and

1 743 million. So whichever way you do it -- Dr. Hill's
2 own model applied to nonstop overlap markets and finds a
3 similar amount of harm to my base model, to my model
4 with more conservative numbers of 751 million.

5 And the reason I did it two ways is the first of
6 the orange bars, the third bar, that's where -- that's
7 the bar Dr. Hill used in his -- in his report, and he
8 said that that was a specification that was not
9 appropriate to use in nonstop overlaps because of the
10 very technical or econometric point, and so I adjusted
11 the specification to address his point and that's the
12 fourth bar I use, and that's called -- that's called
13 "continuous line segments," your Honor. And it doesn't
14 matter whether you adjust it or not, you get very
15 similar results.

16 And even if Dr. Hill, if we look at those nonstop
17 overlaps, and even if we exclude Spirit prices and
18 customers, you still get a big harm number, and that
19 harm number, that \$327 million, that's the number in the
20 right-most bar.

21 MR. BATTAGLIA: Slide 98, please.

22 Q. Now, Doctor, given the assistance of horizontal
23 merger between competitors, how does Dr. Hill justify
24 ignoring the likely harm in nonstop overlap markets?

25 A. Well Dr. Hill justifies this in three different

1 ways. And so let me talk about all three ways.

2 So, first of all, I estimate harm in 73 nonstop
3 overlap markets. So, um, Dr. Hill assumes no harm in 58
4 of these markets. So he puts these 58 markets into one
5 of three buckets.

6 The first bucket is that they do not meet the
7 presumption of being -- of being highly concentrated and
8 therefore being presumed to enhance market power, the
9 merger being presumed to enhance market power. And to
10 the second is that they do not meet the presumption with
11 passenger, um -- they meet the presumption with
12 passenger shares, by not with revenue shares.
13 And the third is that they touch an airport with a
14 divestiture. And let me talk about each of those three
15 reasons.

16 So the first reason, um, just because a market
17 doesn't meet the presumption doesn't mean that there's
18 no likely harm in that market. And in fact the
19 guidelines lay out three levels of potentially
20 concentrated markets and almost all the markets that
21 don't meet the presumption of harm are in those next two
22 buckets of having likely competitive harm.

23 And the second is, as I already testified to, that
24 passenger shares here are more appropriate than revenue
25 shares.

1 And the third point is something that Dr. Chipty
2 will be testifying to, which is that divestitures --

3 THE COURT: Well then let him testify to it.

4 THE WITNESS: Absolutely, yes. All right.

5 THE COURT: Go ahead and ask another question.

6 Q. Yes, so, Doctor, um, you just discussed 58 -- how
7 Dr. Hill treats 58 of your 73 nonstop overlap markets.
8 How does he treat the remaining 15 nonstop overlap
9 markets?

10 A. For those markets, and Dr. Hill labels them "holdout
11 routes," he offers no alternative estimate of harm to
12 what I'm finding.

13 Q. And, Doctor, what's being shown here on the right-
14 hand side?

15 A. What I showed is, first of all, my three harm -- my
16 three net harm numbers, and that's the same 751 million
17 as the red bar on the left, and then the two other ways
18 I calculated them are the two other red bars. And what
19 I show on the right is how Dr. Hill gets to only 143
20 million in, um, in net harm in what he calls "holdout
21 routes," and that's a number Dr. Hill reports in the
22 supplement to his report. And so he drops those three
23 other buckets, and those are the ones where there's
24 divestitures, ones where there's, um -- they're not in
25 presumption markets, or ones that are in presumption

1 markets but where -- but only with passenger shares and
2 not revenue shares.

3 And so the difference between me and Dr. Hill in
4 our findings in nonstop overlaps fundamentally boils
5 down to him dropping 58 of these 73 nonstop overlap
6 markets.

7 MR. BATTAGLIA: Slide 99, please.

8 Q. So, Doctor, you just discussed two key omissions
9 made by Dr. Hill. In what other ways do you and
10 Dr. Hill disagree?

11 A. Well Dr. Hill, um, made a number of other critiques
12 about my econometric modeling.

13 Q. Okay, let's take a closer look at those critiques.

14 MR. BATTAGLIA: Slide 100, please.

15 Q. Now earlier you mentioned that Dr. Hill's criticisms
16 didn't affect your conclusion. Can you explain why?

17 A. Yeah, so what I report here, the red bar on this, is
18 these are -- this is the same number I've testified to
19 earlier, 751 million, and so what I did in this analysis
20 here is I said let me look at each of Dr. Hill's
21 critiques that make any sense to look at and let me see
22 what happens to the net harm if I take my model and I
23 adjust it to account for Dr. Hill's critiques. And so
24 for five of his critiques, the net harm was actually
25 bigger if I implement Dr. Hill's critiques. And those

1 are the five bars that lie to the left of that \$751
2 million number.

3 And for three of his critiques, or four of his
4 critiques, I should say, the numbers are smaller, but
5 they're not -- but there's still significant harm in
6 nonstop overlaps. And, your Honor, what I highlighted
7 in the red square, the red rectangle to the right, is
8 when I addressed all of Dr. Hill's critiques together --
9 and he had two different sets of critiques and that's
10 why they're two different numbers, and even if I address
11 all of them together, then that harm is very similar to
12 the net harm that I give, 623 million instead of 751
13 million. And I'll point out that the right-most bar,
14 the 370 million, that's a critique I think is not
15 appropriate to do. But even if you accounted for it,
16 Dr. Hill would still find substantial harm in nonstop
17 overlap markets.

18 Q. And, Doctor, which of your regressions illustrates
19 this analysis?

20 A. This is all with my weighted regression model and
21 then adjusting it for Dr. Hill's critiques.

22 MR. BATTAGLIA: Slide 101, please.

23 Q. Now, Doctor, how does this chart differ from the one
24 on the previous slide?

25 A. Well what this does it it's the same set of

1 critiques but it's for Spirit-only nonstop markets,
2 while the previous slide was about nonstop overlap
3 markets.

4 Q. And what did your analysis for these markets find?

5 A. What I found is that my own analysis of the net harm
6 in Spirit-only markets was again right in the middle
7 between Dr. Hill's critiques. In other words, if I take
8 five of Dr. Hill's critiques and apply them to my model,
9 then the net harm goes up. If I take all of the
10 critiques together, those are again the red rectangle
11 that I circle.

12 And my overall point here is that, depending on
13 the specification, the numbers could vary a little bit
14 based on what I found, but in no way are -- does this
15 make this transaction beneficial to American consumers.
16 If we just look at the number here and we take any one
17 of Dr. Hill's critiques and we add it up with the net
18 harm from the nonstop overlap markets, this merger is
19 still going to be very costly to consumers. And in many
20 cases, depending on the critique, it's going to be more
21 costly than what I found.

22 Q. Thank you, Doctor.

23 MR. BATTAGLIA: Slide 102.

24 Q. Dr. Gowrisankaran, were any of Dr. Hill's critiques
25 not reflected in the two charts we just discussed?

1 A. Yes, there was one econometric critique that I did
2 not put in there.

3 Q. And which one was that?

4 A. Dr. Hill's critiques, um, my use of what's called an
5 "intercept term," and I think it was, um, fundamentally
6 wrong, his critique was wrong.

7 Q. And could you please explain the use of an
8 "intercept term"?

9 A. Yeah, so in a regression analysis, the point of the
10 regression analysis -- and this is the analysis I did
11 with all the dots that marked net harm, and then the
12 line that I fit through it.

13 So in any analysis the point of the regression
14 line is to fit the two relationship and the data as
15 closely as possible, and so I illustrate that on the
16 left with just a hypothetical and the blue dots there
17 are meant to be the points that you're trying to fit.
18 And what a regression line does is it's a statistical
19 package that then says "Let me try to find a line that
20 goes really closely through those dots." And so in this
21 case, as I've drawn those blue dots in the hypothetical,
22 that line would not go through the origin or the point
23 marked 0.

24 So what an intercept term does is it allows for
25 those lines to not go through the origin, not go through

1 that 0 point. If I were to admit the intercept term in
2 my regression, then what would happen is I would be
3 forcing the line to go through 0, and the example of
4 that would be the dotted red line in the hypothetical,
5 and that's a biased estimate. What I mean by that is
6 it's not going to fit the data very well and so it's not
7 going to be reliable. Unlike the blue line, that red
8 line is not going to be reliable in predicting the
9 impact of any relationship. And that's why as an
10 econometrician, we always use intercepts in our
11 regressions.

12 Q. So, Doctor, how is the inclusion of an intercept
13 term relevant to your net harm level?

14 A. So what I showed on the right is, um, those are the
15 same, um, those are the same effects of JetBlue and
16 Spirit that I estimated, the same curved lines that I
17 used in my net harm model, and what they show is the
18 real data or showing that that JetBlue line is pretty
19 similar to 0 to going through the origin, it goes
20 through that point marked 0 percent or pretty close to
21 it, but the Spirit line doesn't. And what that means is
22 that not including an intercept term, as Dr. Hill does,
23 would allow that Spirit line, would make it biased. It
24 would no longer reflect the real impact of the real
25 Spirit Effect, it would reflect a biased version of

1 that.

2 MR. BATTAGLIA: Slide 103, please.

3 Q. Now, Doctor, is there anything in Dr. Hill's report
4 that uses your net harm model for something other than
5 harm?

6 A. Um, yes, there is.

7 Q. And what is that?

8 A. Well Dr. Hill took my net harm model and he swapped
9 out prices for quantities and he used it to try to
10 predict how much quantities, number of passengers that
11 is, would change if you replace Spirit with JetBlue.

12 Q. And, Doctor, what do you make of that exercise?

13 A. Well I didn't think it made a lot of sense. And so,
14 first of all, Dr. Hill didn't really offer an
15 explanation for what he was doing. So this analysis was
16 only mentioned in a footnote in his report and the
17 actual analysis he did was in an appendix, so he didn't
18 really give an explanation for it. But also, if I
19 wanted to predict the output effects of replacing Spirit
20 with JetBlue, this wouldn't be the model I would pick,
21 and I wasn't sure why Dr. Hill picked this model given
22 that there was no explanation for what he was trying to
23 do or why this was the right model.

24 Q. And what did Dr. Hill find using your model in this
25 way?

1 A. What Dr. Hill found was that in percent terms there
2 was very little change in passengers from replacing
3 Spirit with JetBlue. And so I showed this, um, by,
4 first of all, this demonstrative, and what the
5 demonstrative shows is the right-most column, the
6 right-most bar is the total number of passengers in
7 these markets, and on the left are the change in
8 passengers that Dr. Hill reports in his figures.
9 As a percent term, he's finding less than a 1 percent
10 change in passengers doing it one way, that's the
11 left-most bar, or less than a 2 percent change in
12 passengers doing it the other way.

13 MR. BATTAGLIA: Slide 104, please.

14 Q. Now, Doctor, why do you think that Dr. Hill's use of
15 your model to predict output is inappropriate?

16 A. Well what Dr. Hill is doing is he's saying, um, if I
17 change, um, capacity what happens to market output? So
18 just in very simple terms what he's saying is if I
19 change the number of planes on that route, so if I
20 change -- JetBlue enters with some planes or Spirit
21 enters with some planes, how does that affect the number
22 of passengers flying? Well the number of passengers is
23 fundamentally linked to the number of planes.

24 And so what you want to do -- when you look at how
25 the number of planes and the number of passengers

1 change, the two should really move in tandem. So if you
2 add a plane, you're going to add about the same number
3 of passengers.

4 Q. And, Doctor, just to be clear, what do you mean by
5 "capacity"?

6 A. What I mean by "capacity" there is the number of
7 planes by which Spirit and JetBlue enter. So in my net
8 harm model, what I'm using is this relative capacity
9 measure, and what I'm doing when I calculate the net
10 harm is I'm saying Spirit and JetBlue have the same
11 number, the same relative capacity or the same number of
12 planes.

13 Q. And, Doctor, how does your net harm model treat
14 capacity?

15 A. My net harm model treats it as the same. So I don't
16 adjust capacity in my net harm model when I -- and
17 that's conservative. I said the defendants are going to
18 have the same Spirit capacity as JetBlue capacity if the
19 merger were to go forward.

20 Q. And, Doctor, outside of the context of your net harm
21 model, did you do any analysis of each airline's impact
22 on market output?

23 A. Um, yes, I did.

24 Q. And what was that analysis?

25 A. Well what I did was I wanted to understand, um,

1 whether, um, Dr. Hill's analysis, why he was getting
2 such a small effect? And so what I did to understand
3 his small effect was I did, um -- I looked at, um, a
4 regression of JetBlue and Spirit entry on the change in
5 total passengers, and then what I did is I divided by
6 the number of flights. And recall again that with
7 Spirit they have fewer flights, 1.7 instead of 2.7.

8 Q. And, sorry, Doctor, what did you find?

9 A. Well that's what's on the demonstrative on this
10 slide. And what I found is that plane for plane Spirit
11 and JetBlue had very similar effects on total market
12 passengers. And that's not surprising because if Spirit
13 enters with one plane or JetBlue enters with one plane,
14 the total market passengers is likely to be very
15 similar. And so when Spirit enters with one plane, or
16 plane for plane, they have a 20.3 percent increase in
17 numbers of passengers in the market, and when JetBlue
18 enters, they have a 21.2 percent increase.

19 Q. And what does this analysis tell you about
20 Dr. Hill's output calculation using your net harm model?

21 A. Well Dr. Hill's output calculation is essentially
22 the difference between that blue bar and the yellow bar.
23 So if you take that blue bar and you subtract the yellow
24 bar, you're going to get a percent number that's very
25 close to 0. And that's exactly what Dr. Hill finds.

1 And so what my analysis verified is that by
2 construction Dr. Hill's output regression is essentially
3 going to give a very small percent number. And it's
4 really noise, there's not much that I would take away
5 from it besides the fact that it should be pretty close
6 to 0 in percent terms.

7 Q. And so, Doctor, is the output result of Dr. Hill
8 using your net harm model consistent with the parties'
9 incentive proposed merger?

10 A. No, it's not.

11 Q. Why not?

12 A. Because what I did in calculating prices is I
13 assumed that the parties, um, would have the same
14 capacity on those routes that they do now. But the
15 parties have an incentive to reduce capacity, as I
16 testified to on Friday, and if they reduce capacity,
17 then it's likely that quantity would also go down on
18 those routes.

19 MR. BATTAGLIA: Slide 105, please.

20 Q. Doctor, now I'd like to discuss how you and Dr. Hill
21 differ with respect to coordinated effects.

22 MR. BATTAGLIA: Slide 106.

23 Q. Doctor, how do you and Dr. Hill disagree on
24 coordinated effects?

25 A. Well we had three -- I would say, big picture,

1 that Dr. Hill doesn't really engage with my analysis of
2 coordinated effects. So this slide just summarizes what
3 I found in my analysis and what Dr. Hill said about it.

4 Q. Would you please explain this briefly?

5 A. Yes. So the first thing I found is that the
6 industry is susceptible to coordination and has a
7 history of coordination, and Dr. Hill does not analyze
8 the susceptibility of the industry to coordination. He
9 also asserts that there's not perfect coordination
10 occurring today, that airlines don't perfectly harmonize
11 their prices, but that's not relevant. I never thought
12 or testified that the airlines perfectly coordinate,
13 just that they engage in some coordination and that they
14 have a history of coordination.

15 The second thing I found is that Spirit's
16 competitive significance -- and the whole Spirit
17 business model, the way that they price, the fact that
18 their prices are less transparent than other airlines,
19 their cost structure, their route network, that makes it
20 effective at disciplining coordination, as I testified
21 on Friday. And Dr. Hill, um, he ignores the effect of
22 losing Spirit, he doesn't engage with that.

23 And the third thing I testified to is that this
24 merger will weaken JetBlue's incentives to disrupt
25 coordination, it's going to make JetBlue look more like

1 a legacy and it's going to increase the symmetry in the
2 relevant markets where one airline can punish another on
3 its hub, and they're going to look more similar.

4 Dr. Hill emphasized instead that JetBlue has been
5 acting like a maverick before the transaction. So he
6 ignores the fact that this effect is about what JetBlue
7 is going to do after the merger, how do JetBlue's
8 incentives change as a result of this merger were it to
9 go forward.

10 Q. Now, Doctor, does the fact that JetBlue has been
11 characterized as a "maverick" change your conclusions
12 with respect to coordinated effect?

13 A. No, it does not.

14 Q. Why not?

15 MR. CULLEY: Objection, your Honor, we covered
16 this yesterday.

17 MR. BATTAGLIA: This is a slightly different
18 question, this actually does appear in
19 Dr. Gowrisankaran's reply report, your Honor.

20 THE COURT: Where?

21 MR. BATTAGLIA: On Pages 113 and 114, Paragraphs
22 207 and 208.

23 THE COURT: What do you say to that?

24 MR. CULLEY: (Looks.) What paragraphs did you
25 say?

1 MR. BATTAGLIA: Paragraphs 207 and 208.

2 (Pause.)

3 THE COURT: He may testify consistent to those
4 paragraphs.

5 Proceed.

6 A. Yeah, so what I'm arguing -- I'm not arguing that
7 JetBlue is not a maverick, what I'm arguing instead is
8 that JetBlue's incentives will change as a result of the
9 merger and it will have less of an incentive to act like
10 a maverick than it did before, less of an incentive to
11 be disruptive.

12 Q. Thank you, Doctor.

13 MR. BATTAGLIA: Slide 107.

14 Q. Now let's switch topics and talk about national
15 competition.

16 MR. BATTAGLIA: Slide 108.

17 Q. Now, Doctor, we've heard testimony suggesting that
18 airlines make competitive decisions on a national level,
19 but is the national market consistent with how consumers
20 purchase airline tickets?

21 A. No, it's not.

22 Q. And why is that?

23 A. When people want to buy plane tickets, they have a
24 flight in mind, they live at someplace and they have a
25 destination in mind. And so as I explained on Friday

1 morning, if you live in Boston and you want to go to
2 Disney World with your family, then you're buying a
3 ticket to Orlando. And the fact that some other
4 airlines have service between Los Angeles and Spokane,
5 it's just not a good substitute for a flight between
6 Boston and Orlando. That's common sense. When people
7 buy tickets, they don't buy them based on the overall
8 network structure, they buy them with an origin and
9 destination.

10 Q. And, Doctor, is the national market consistent with
11 how airlines price tickets for the routes on which they
12 operate?

13 A. It's really not.

14 Q. Why not?

15 A. Well airlines respond to this competition and so
16 when they're looking at pricing, they're thinking of
17 competitors on those routes. What I found is that when
18 a new competitor comes in, be it Spirit or JetBlue,
19 airlines lower their prices on routes. That's how
20 competition, that's how tickets are sold, it's based on
21 routes. And that's how airlines do their pricing.

22 Q. Doctor, is it appropriate to use national passenger
23 shares?

24 A. It's not, it would be not be appropriate to look at
25 this transaction with national passenger shares.

1 Q. Why not?

2 A. Well it's just going to understate the significance
3 of JetBlue and Spirit on the routes where they compete.
4 So neither JetBlue nor Spirit operate in Spokane
5 Washington, but that's not relevant to the fact that --
6 that if you look at South Florida, like Orlando and
7 Miami and routes that are served from there, JetBlue and
8 Spirit have big market shares on those routes, and the
9 fact that they don't operate in some parts of the
10 country or don't have a big presence in other parts,
11 it's not really relevant to this.

12 And so just as one example that I testified to
13 earlier, um, Boston to Orlando. Spirit shares 15
14 percent. JetBlue shares 42 percent. These are
15 highly-concentrated markets.

16 MR. BATTAGLIA: Slide 109, please.

17 Q. Doctor, we're almost done.

18 MR. BATTAGLIA: Slide 110.

19 Q. But before we finish, can you please provide a
20 summary of your findings and the likely competitive
21 effects in a merger?

22 A. Yes. So what I find, first of all, is that Spirit
23 and JetBlue compete head to head, and Dr. Hill agrees
24 with this assessment, and this competition will be lost
25 if this merger were to go forward, and that's the

1 biggest part of the reason for why this is a bad deal
2 for American consumer.

3 Spirit and JetBlue -- the second thing I found is
4 that Spirit and JetBlue have large shares, large market
5 shares, and the merger is presumptively anticompetitive
6 in many relevant markets that I've defined, and those
7 critiques of their shares are robust to various -- those
8 findings of large shares, excuse me, are robust to
9 various critiques by Dr. Hill.

10 And the third thing I found is that there's
11 substantial consumer net harm from this merger. So
12 conservatively I find \$900 million annually in net harm
13 to American consumers, and that \$900 million figure
14 takes as given the defendants' conversion efficiency
15 claim.

16 A particularly large portion of the net harm is in
17 nonstop overlap markets and cost-conscious customers who
18 form the target market of Spirit are especially going to
19 be harmed by the elimination of Spirit. And these
20 estimates are robust to Dr. Hill's econometric critiques
21 and even to using his own model when applied to nonstop
22 overlaps and applied to Spirit passengers included in
23 the mix of prices.

24 MR. BATTAGLIA: Slide 111, please.

25 Q. So, Doctor, what do these likely competitive effects

1 mean for consumers?

2 A. What I showed here is the dollar values of what the
3 net harm to consumers would be if this merger were to go
4 forward, and the three columns on the left, the three
5 red bars, those are the net harm calculated three
6 different ways in nonstop overlap markets that I've
7 already testified to earlier.

8 The numbers on the right, those are the net harm
9 in Spirit-only nonstop markets. And again I showed the
10 three different ways that I characterized this, with the
11 weighted data, the unweighted data that I think is more
12 robust, and with the ticket data that includes all the
13 ancillary fees that people pay on Spirit and other
14 airlines.

15 MR. BATTAGLIA: Slide 112, please.

16 Q. And what's being shown here, Doctor?

17 A. These are the two bars from Dr. Hill's model that I
18 testified to earlier. And what these show is that
19 Dr. Hill's model, if I just include nonstop overlap
20 markets and I include Spirit passengers and the low
21 prices they pay, it fundamentally agrees with my
22 conclusions. And so those numbers from Dr. Hill's model
23 adjusted in those two ways are \$743 million in nonstop
24 overlap markets and \$282 million in harm in Spirit-only
25 nonstop markets. Any way you cut it, this merger is

1 likely to harm American consumers.

2 Q. (Pause.) And, Doctor, one last question.

3 The Court asked you a question earlier about
4 airlines entering new markets. In what ways does your
5 net harm model account for entry by other airlines?

6 A. So my net harm model, it allows for the fact that
7 other airlines will enter. So when I calculated the --
8 all of the entry of Spirit and the entry of JetBlue, um,
9 in my analysis I kept the data after they entered
10 regardless of what other airlines did. And so my model
11 fully accounts for the fact that Spirit and JetBlue,
12 when they enter, that maybe more airlines enter or maybe
13 some airlines exit, but whatever happens, those events
14 are in my data. I'm keeping the prices. I'm treating
15 the shock that's a natural experiment as Spirit or
16 JetBlue is entering in markets. And in doing that I'm
17 fully accounting for the fact that other airlines may
18 adjust their capacity or may enter or exit in response
19 to Spirit or JetBlue entering.

20 Q. Thank you, Dr. Gowrisankaran.

21 MR. BATTAGLIA: I have no further questions on
22 direct, your Honor.

23 THE COURT: And you want to examine him?

24 MR. CULLEY: Yes, your Honor.

25 THE COURT: Let me just take a moment before you

1 start.

2 I've gone over what's been proffered, at least as
3 of Friday, as exhibits and I've divided them into two
4 categories, and I'll pass them back to you, A and B.

5 Having looked at A, it looks to me like the
6 documents in Subcategory (a) meet the criteria of Rule
7 1006 and I'd be prepared to accept them as actual
8 exhibits from which I could draw inferences so long as I
9 don't base anything on the titles of the exhibits which
10 are somewhat argumentative.

11 Now, B, um, I would be prepared to accept as
12 demonstrative aids. Demonstrative aids are not
13 evidence, but as the witness himself has referred so
14 often to these documents, they are "demonstrative aids,"
15 they help me understand the witness's testimony. But
16 their probative value rests on the witness's testimony,
17 not on the compilation of underlying raw data. So I'm
18 certainly, when I come to reflect on this case, going to
19 be looking at all of the demonstrative evidence in order
20 to understand his testimony and decide the extent to
21 which I credit it.

22 I'll also be looking at those documents that I
23 think meet 1006 and I can draw inferences directly from
24 those documents as well as using them to understand his
25 testimony.

1 Now if you agree with this, because I don't really
2 see the enormous difference, I'm going to be looking at
3 these documents, um, if you agree with this we can give,
4 for the purity of the record, my Subcategory (a), we can
5 give them exhibit numbers, and rather than renumber
6 these as demonstratives, it seems to me that the ones in
7 Subcategory (b) can have their exhibit numbers for
8 identification, they are parts of the expert report, and
9 I can use them as demonstrative aids.

10 Argument now doesn't make sense, but I'll pass
11 these back so you can glance at them and you can see the
12 line that I've drawn.

13 And if you're ready to cross-examine, go right
14 ahead.

15 MR. BATTAGLIA: I'm sorry, your Honor. In
16 addition to the ones that you've reviewed, we do have a
17 set of 1006s from today's testimony.

18 THE COURT: Yeah, I'm sure you do. Take a look at
19 those and you'll get a pretty good idea of how I'd react
20 to them. Let's let him cross-examine.

21 MR. BATTAGLIA: Thank you, your Honor.

22 THE COURT: And I thank you.

23

24 CROSS-EXAMINATION BY MR. CULLEY:

25 Q. Good morning, Doctor.

1 A. Good morning.

2 Q. I'd like to start by looking back at your slide that
3 categorized the different relevant markets here. And
4 I'd like to start with the last bullet, um, that titled
5 "Future Spirit Nonstop Markets."

6 THE COURT: Are we looking at his slides now?

7 MR. CULLEY: That's right, your Honor.

8 THE COURT: And they have numbers. So can you
9 tell me the number?

10 MR. CULLEY: Slide 20, your Honor.

11 THE COURT: Thank you.

12 A. (Looks.)

13 Q. And the routes that are in this category, Doctor,
14 those are routes where you're asserting, based on
15 Spirit's last 5-year plan, that Spirit will offer
16 nonstop service by 2027, correct?

17 A. Yes.

18 Q. And you did not update your analysis of those routes
19 to reflect any changes in Spirit's plans since 2020 --
20 since 2022, correct?

21 A. Yes, that's right, but I don't calculate net harm
22 for those numbers because I know that the plans might
23 change.

24 Q. And you didn't testify to any individual analysis of
25 the likelihood that Spirit will enter any of those

1 routes, correct?

2 A. Um, that's not quite -- no, that's not quite correct
3 because I did -- I did include some data since my
4 initial report that showed Spirit had entered some of
5 these routes in the current year.

6 Q. And that it hadn't entered others, correct?

7 A. That's correct, yes.

8 Q. And you didn't testify to any analysis of the
9 intensity of Spirit, what the intensity of Spirit's
10 entry in those routes could be, correct?

11 A. Yes, I think you mean by "intensity" like the number
12 of flights per day, and I did not, that is correct.

13 Q. And you didn't testify to any analysis of what other
14 carriers are present on those routes, right?

15 A. Could you repeat the question?

16 Q. And you did not testify to any analysis of what
17 other carriers would be present on these future nonstop
18 market routes, correct?

19 A. That's correct, yes.

20 Q. And you did not testify to any analysis of whether
21 other ULCCs would be well-positioned to enter any of
22 these future nonstop markets, correct?

23 A. Um, that's right, yes.

24 Q. And for those routes where JetBlue had service, you
25 did not testify to any analysis of JetBlue's share for

1 the routes that could be future Spirit nonstop markets,
2 correct?

3 A. I think that's not correct, no, um, for the reasons
4 I said. I did say which of the routes where Spirit had
5 entered since, um -- since my initial data were
6 presumptive markets. And so the presumption has a
7 implication. I calculate that with market shares,
8 including JetBlue's market shares.

9 Q. But you did not calculate market shares for future
10 Spirit nonstop markets?

11 A. Correct, yes. But just to be clear, I did for the
12 2022 to 2023 -- like 2-3-2022 up to 2-3-2023.

13 Q. And these go out to 2027, correct?

14 A. That's right, yes.

15 Q. You didn't calculate market shares out to 2027,
16 right?

17 A. Yes, that's right, it wouldn't be possible.

18 Q. All right. Okay, let's go up to the next item on
19 your list, the nonoverlap routes.

20 And you agree that Spirit and JetBlue do not
21 compete on these routes, correct?

22 A. Um, yes, I agree that they don't compete on those
23 routes.

24 Q. And so there'll be no loss of head-to-head
25 competition between Spirit and JetBlue on these routes

1 as a result of the merger, correct?

2 A. Right, yes, as I testified, the merger will have an
3 impact on those routes, but there's no loss of
4 competition stemming from the reduced competition on
5 those routes.

6 Q. And the category above that chapter is "Overlaps."
7 And just going here, continuing in reverse order, the
8 bottom one on that list is "Connect Overlap," is that
9 right?

10 A. That's right.

11 Q. And those are routes where both Spirit and JetBlue
12 have only connecting service?

13 A. That's right, yes.

14 Q. And for that category the only analysis that you
15 testified to in your direct examination was to calculate
16 market shares, right, for those specific set of routes?

17 A. Um, no, that's not quite right because I also gave
18 Herfindahls and changes in Herfindahl for those routes.
19 So if you recall, um, there was a figure I gave with a
20 bunch of circles and most of them were red, but some of
21 them were blue and green, and those were connect overlap
22 routes. I don't remember whether it was blue or green,
23 but one of those.

24 Q. And thank you, Doctor. Those Herfindahls,
25 Herfindahl Index, HHI numbers that you just mentioned,

1 those were calculations based on the market shares,
2 correct?

3 A. Yes, that's right.

4 Q. And to calculate the HHI based on the market shares,
5 that's just -- you just apply the mathematical formula,
6 correct?

7 A. Right, to all the airlines in that industry.
8 Absolutely.

9 Q. And again when you assert that some of those routes
10 qualify for the presumption, you are just comparing that
11 HHI number with 2500 and whether it went up by more than
12 200, correct?

13 A. Yes.

14 Q. And you didn't calculate harm for those routes, the
15 connect routes, right?

16 A. I did not calculate harm or net harm for those
17 routes, yes.

18 Q. And let's go up to the next category, the "Mixed
19 Overlaps."

20 A. (Turns.)

21 Q. So I'm going to divide these into two. So these are
22 mixed -- these are routes where one of the parties had
23 nonstop service but the other party had connecting
24 service, correct?

25 A. Yes, that's right.

1 Q. And so for the routes where Spirit is the party that
2 has the connecting service, the only analysis that you
3 testified to on your direct examination was the
4 calculation of market shares and HHIs, correct?

5 A. Yes, that's the only numbers I gave.

6 Q. And again, just as we discussed before, that's just
7 applying a mathematical formula to the market shares,
8 correct?

9 A. Yes, that's right.

10 Q. And you didn't apply a harm calculation to those
11 routes that Spirit has connecting service on, correct?

12 A. That's right, I did not.

13 Q. And then for the mixed routes where JetBlue is the
14 party with a connecting flight, you did calculate harm
15 for those routes, correct?

16 A. Yes, I calculated harm and net harm for those
17 routes.

18 Q. And for all but four of those routes JetBlue shared
19 below 1 percent, is that right?

20 A. I don't remember exactly, but I can turn to my
21 appendix, I list the JetBlue shares on those routes.

22 Q. It wouldn't surprise you that all but four of those
23 routes JetBlue shares below 1 percent, correct?

24 A. Correct.

25 Q. And you'd agree that on those routes where, um,

1 those mixed overlap routes that don't meet the
2 presumption, what your net harm calculation is measuring
3 is not primarily a loss of head-to-head competition
4 between JetBlue and Spirit, correct?

5 A. No, I wouldn't quite agree with that, um, because
6 there's a bunch of routes that don't meet the
7 presumption, but that might still be moderately
8 concentrated or highly concentrated, but have a smaller
9 threshold of increases in concentration, and as an
10 economist and under the merger guidelines, these routes
11 are considered to have likely competitive effects.

12 Q. Doctor, you, um -- those mixed routes that do not
13 meet the presumption, those were included in a category
14 that Dr. Hill called "Econometric Complaint Routes,"
15 correct?

16 A. Yes, that sounds right to me. But I don't remember,
17 he had a lot of categories, so.

18 Q. Let's go ahead and take a look at Pages 158 to 159
19 of your reply report.

20 MR. CULLEY: Could you put that on the screen?

21 A. I think I have it in my original binder.

22 Q. Oh, that's right.

23 A. (Looks.)

24 Q. And let's look at Paragraph 292.

25 A. (Looks.)

1 Q. Which crosses over from 158 to 159.

2 A. (Looks.) Right.

3 Q. And you wrote there, sir, that "Meanwhile these
4 econometric complaint routes are overlaps where Spirit
5 offers nonstop service but which do not meet the
6 presumption. Harm in these markets occur because of
7 JetBlue's decision to eliminate Spirit, not primarily
8 because of the loss of head-to-head competition between
9 Spirit and JetBlue in these markets."

10 That's what you wrote right there, sir?

11 A. Yes, that's right.

12 Q. All right. Now as you just mentioned a moment ago,
13 you did not testify about divestitures, correct?

14 A. That's correct.

15 Q. And, um, let's talk about your individual analysis
16 though.

17 So your concentration analysis that reports HHIs
18 and market shares throughout, that did not consider the
19 impact of divestitures, correct?

20 A. Yes, that's correct.

21 Q. And you've "gumby" analysis, that did not consider
22 the impact of divestitures, correct?

23 A. Yes.

24 Q. And your econometric analyses, that did not make any
25 adjustments for divestitures, correct?

1 A. That's right.

2 Q. So let's go to your final category then, which are
3 the nonstop overlap routes, and I'm going to focus on
4 the presumption routes. But let's first talk about the
5 role that market shares played in your assessment.

6 You'd agree that as an economist you wouldn't do
7 an analysis of a merger that only considers market
8 shares, right?

9 A. Yeah, I would agree with that. It's a first step to
10 looking at competitive -- you know to looking at harm,
11 concentration, Herfindahls, and then I would like to do
12 competitive effects.

13 Q. And you would agree that you wouldn't want to look
14 at market shares on particular markets in isolation,
15 correct?

16 A. I'm not sure what you mean by that. It depends, I
17 guess.

18 Q. Well in determining whether market shares would
19 accurately predict the transaction's probable effect on
20 future competition, you wouldn't want to look at market
21 shares on a particular market in isolation, correct?

22 A. Um, yes, that sounds right.

23 Q. And your concentration analysis does not account for
24 entry by other airlines that may occur in response to
25 the merger, correct?

1 A. Well that's not exactly -- no, I wouldn't say that's
2 correct because -- so concentration and shares are about
3 a point in time, but when there's a presumption of
4 anticompetitive harm, that implicitly is saying that
5 they're going to take that presumption -- that those
6 markets are anticompetitive or likely anticompetitive
7 even though everybody, economists and the agencies and
8 the guidelines, recognize that there may be some entry
9 in the future. So I wouldn't say it's fair to say that
10 like those concentration measures don't account for the
11 possibility of entry.

12 Q. Okay, let's take a look at your deposition, Doctor,
13 Page 180, Line 10, through Page 181, Line 8, and that's
14 in that binder that we just handed up.

15 A. Yeah. (Looks.)

16 Q. And there, Doctor, I started by asking you about
17 your concentration analysis, correct?

18 A. Uh-huh.

19 Q. And then down near the end, um, we were talking
20 about the concentration analysis and I asked you, "And
21 therefore they don't incorporate entry that may occur in
22 response to the merger, correct?" And you answered,
23 "They do not account for entry that would-may occur in
24 response to the merger."

25 Is that right?

1 MR. BATTAGLIA: Your Honor, I object to this
2 impeachment, Mr. Culley's question was vague at the time
3 of entry.

4 THE COURT: Overruled.

5 A. So that's what it says, but the previous line is --

6 Q. Thank you, Doctor.

7 MR. BATTAGLIA: Objection, your Honor, I would
8 like, for completeness, the rest of his answer read.

9 THE COURT: The entire answer may be read.

10 MR. BATTAGLIA: Thank you, your Honor.

11 A. That's correct. But the previous line what I said
12 is "While the concentration measure is, by its
13 definition, a measure at a point in time." And that's
14 exactly what I testified to now, it measures at a point
15 in time.

16 Q. Doctor, you're going beyond reading the rest of the
17 answer.

18 MR. BATTAGLIA: Objection.

19 THE COURT: That is his testimony, as you well
20 know.

21 Go ahead.

22 MR. CULLEY: Thank you, your Honor.

23 Q. And considering the prospect of entry in response to
24 a merger is part of the full assessment of the
25 competitive effects of a merger, correct?

1 A. Sir, would you repeat that please?

2 Q. Considering the prospects of entry in response to a
3 merger is part of the full assessment of the competitive
4 effects of a merger, correct?

5 A. Yes, it generally is.

6 Q. Okay, let's talk about your specific sets of shares.

7 You talked about two sets of shares in your direct
8 examination, one set for the 12 months that ended in
9 June 2022, and one that ended in the 12 months ending in
10 June 2023, is that right?

11 A. Yes.

12 Q. Let's bring up your Slide 27 in the presentation
13 that you used in your direct examination.

14 A. (Looks.)

15 Q. And this first line here says, "Most appropriate to
16 measure shares using 2021 Q3 to 2022 Q2 data." And
17 right below it it says, "Shares measured after merger
18 announcement may reflect changed incentives resulting
19 from agreement to merge." Do you see that?

20 A. Um, yes, I do.

21 Q. You do not identify any evidence, Doctor, for any
22 particular route that Spirit has exited that absent the
23 pendency of the merger it would have continued to fly
24 that route, correct?

25 A. That's right.

1 Q. And you did not identify any evidence that for any
2 particular route JetBlue has exited, that absent the
3 pendency of the merger, it would have continued to fly,
4 correct?

5 A. Yes, that's right.

6 Q. You used the Department of Transportation's DB 1B
7 data to calculate these shares in June 30th, 2022,
8 correct?

9 A. Yes, that's right. I also used the OAG data.

10 Q. And the shares you calculated in your report were
11 annual shares, right?

12 A. Yes, that's right.

13 Q. For 12 months?

14 A. Yeah.

15 Q. Now when you look at a 12-month window, it's
16 possible that another carrier could enter a route midway
17 through your window, correct?

18 A. Sure.

19 Q. And before that, um -- and before that entry, their
20 share would be 0, correct?

21 A. Yes, that's right.

22 Q. And so if you do shares for the full year, they may
23 understate that carrier's go-forward service, is that
24 fair?

25 A. Um, sure.

1 Q. And you didn't do anything to adjust your shares for
2 a particular route if a carrier entered the route
3 partway through the year, is that right?

4 A. No, I did not. I don't think it would be possible.

5 Q. Okay. And let's take a look at some examples where
6 this occurred.

7 MR. CULLEY: I would ask that we put up
8 Gowrisankaran's 1006 Summary 1.

9 Q. And this 1006 summary, Doctor --

10 MR. CULLEY: It should be in a folder there in
11 your binder, your Honor, that we handed up.

12 THE COURT: A folder?

13 MR. CULLEY: Yes.

14 THE WITNESS: Should I look at it in the binder?

15 MR. CULLEY: It should also be in your folder
16 there. In the folder in the front.

17 THE WITNESS: Oh, I see.

18 THE COURT: Right there, yes.

19 THE WITNESS: (Looks.)

20 Q. Okay, this 1006 summary, Doctor, splits out your
21 annual shares into quarters. And then we've added the
22 following four quarters as well using the same
23 methodology that you used for your later set of shares.

24 MR. CULLEY: And, your Honor, I would move to
25 admit Gowrisankaran 1006 Summary 1 as Exhibit 802.

1 THE COURT: All right, let me just be sure I have
2 it. It's this with your additions here, is that right?

3 MR. CULLEY: No, that's Demonstrative A, your
4 Honor, the other folder contains the 1006.

5 THE COURT: It's the other folder?

6 MR. CULLEY: Correct. Sorry for the confusion.

7 THE COURT: Oh, no. (Looks.) Yes, I have it.
8 All right.

9 Any objection?

10 MR. BATTAGLIA: No objection, your Honor.

11 THE COURT: All right. It may be received as
12 Exhibit 801 in evidence.

13 (Pause.)

14 MR. CULLEY: 802, your Honor.

15 THE COURT: Thank you.

16 (Exhibit 802, marked.)

17 Q. Okay, so let's take a look at some of these
18 examples, Doctor.

19 So the first example, um, is the San Juan, Puerto
20 Rico, to Tampa, Florida route. And there in your
21 Appendix D of your report, you reported Frontier's share
22 as 1 percent. Is that right?

23 A. It sounds right. I can check if you'd like.

24 Q. And as you can see here, Doctor, Frontier entered
25 partway through Q2 of 2022?

1 A. Um, okay.

2 Q. And are you aware that Frontier entered this route
3 on June 23rd, 2022?

4 A. It sounds about right to me.

5 Q. And that's the last week of your window, right?

6 A. Yes, that's right.

7 Q. And in that quarter, just in one week, it obtained a
8 4 percent share. And then in the four quarters
9 following, its share was above 20 percent in each of
10 those quarters, isn't that right?

11 A. That's what this data shows. I haven't evaluated
12 it.

13 Q. And then on Aguadilla, Puerto Rico, to Orlando,
14 Florida route, you in your Appendix D reported Frontier
15 having a share of 7 percent, correct?

16 A. Yeah, I mean again would you like me to check the
17 report?

18 Q. Does that sound right to you?

19 A. Sure, yeah.

20 Q. And again at some point during Q1, 2022 Frontier had
21 entered that route, correct? It's on the share data.

22 A. I mean it looks that way, but it's hard to know, it
23 could be seasonal service also.

24 Q. And then in the four quarters following, again
25 Frontier had a share that exceeded 25 percent in every

1 quarter?

2 A. (Looks.) Yeah, that's right. I think they
3 highlighted the wrong thing, but, yeah, in the four
4 quarters starting in 2023, it's 25 percent or more.

5 Q. And then on the Cartegena, Colombia to Miami route,
6 you reported Avianca as having a 12 percent share, does
7 that sound about right?

8 A. Um, sure.

9 Q. And while they were present on the route, their
10 share was in the single digits for the first three
11 quarters?

12 A. Yes, that's what this is showing.

13 Q. And then their share increased considerably in the
14 fourth quarter to 28 percent?

15 A. Yes, and it seemed to go down after that.

16 Q. And they continued to have double-digit shares
17 throughout the four quarters following the window,
18 correct?

19 A. Yes, that's right.

20 Q. And then on the Miami, Florida to Lima, Peru route,
21 you reported Sky Peru as having a 1 percent share,
22 correct?

23 A. Yeah, again I'll take your word for it. It sounds
24 right. But I don't know for sure. I don't want to
25 testify to, um --

1 Q. And Sky Peru, they're an ultra low-cost carrier,
2 correct?

3 A. Um, yes, they are.

4 Q. And for the first three quarters they had a 0
5 percent share?

6 A. That's right, according to this.

7 Q. And they entered during the fourth quarter of 2022?

8 A. It looks that way from this, yes.

9 Q. And then they had double-digit shares for the
10 following four quarters, correct?

11 A. Yes, that's what this shows.

12 Q. Let's go to, um, the changes that occurred in the
13 year after the period you used to calculate your shares.

14 MR. CULLEY: Can we put up Gowrisankaran
15 Demonstrative A, please.

16 And that's the one you had in your first folder,
17 your Honor. Sorry for so many folders.

18 THE COURT: (Looks.)

19 Q. So this is on your slides in your direct, Doctor,
20 but in a different orientation, is that right?

21 A. That's right.

22 Q. And you heard Mr. Kirby testify about Spirit's exits
23 on your presumption routes, is that correct?

24 A. Yes, I was here for Mr. Kirby's testimony.

25 MR. CULLEY: Okay, so let's add those to the

1 demonstratives.

2 And, your Honor, if you're working with the paper
3 version, that's just the next page.

4 THE COURT: Thank you.

5 Q. And you heard Mr. Friedman testify to JetBlue's
6 exits on your presumption routes, correct?

7 A. Yes, but there's one thing about this that looks a
8 little bit inaccurate, if I may?

9 Q. Your counsel is free to ask you questions.

10 A. Okay.

11 Q. You heard Mr. Friedman testify about JetBlue's exits
12 from your presumption routes, correct?

13 A. I wasn't here for Mr. Friedman's testimony. Oh,
14 yeah, I was not here for Mr. Friedman's testimony, but I
15 read it, the transcript.

16 Q. You read it?

17 A. Yes.

18 Q. And let's add those exits to the demonstrative
19 please.

20 Again that will be on the next page for the paper
21 copy.

22 Q. And you heard or read Mr. Friedman's testimony about
23 entry on the Miami, Port-au-Prince, Haiti and the Miami,
24 Lima routes by other carriers, correct?

25 A. Yes, that sounds right.

1 Q. And you also read Mr. Friedman's testimony about
2 JetBlue's competitive change summaries, correct?

3 A. Yes, and I looked at some of those competitive
4 change summaries.

5 MR. CULLEY: Let's go ahead and add those to the
6 demonstrative.

7 It should be on the next page in the paper copy.

8 Q. And you also heard -- sorry?

9 A. Where should I be looking for this? You said it was
10 another --

11 Q. Gowrisankaran Demonstrative A, which is in the other
12 folder.

13 A. Fine.

14 Q. And we would be now on the third page of that paper
15 copy.

16 A. Right. (Looks.)

17 Q. Do you have that in front of you, sir?

18 A. There we go. (Looks.) Yes.

19 Q. And you also heard testimony about the proposed
20 divestitures in this case, correct?

21 A. Um, from whom?

22 Q. Mr. Hayes and others.

23 A. Yes, I heard Mr. Hayes's testimony.

24 MR. CULLEY: And let's add any route with at least
25 one point at a divestiture report to the demonstrative

1 as well, and this will be on the last page.

2 (On screen.)

3 Q. And there are only four routes which remain unmarked
4 on the demonstrative by a Spirit exit, a JetBlue exit,
5 and through your expansion by other carriers or being
6 touched by a divestiture report, is that right, Doctor?

7 A. There are only four that are unmarked. I don't know
8 that I would say a Spirit exit. But, yes, there are
9 four that are unmarked.

10 Q. Okay, let's turn to your new analysis of presumption
11 routes from the 12 months that ended on June 30th of
12 this year. So that's on Slide 28 of your presentation.

13 A. (Looks.)

14 MR. CULLEY: Could we put that up on the screen,
15 please.

16 (On screen.)

17 Q. You show here, Doctor, that there are 9 routes where
18 the shares indicated a presumption in the year that
19 ended June 30th, 2022, but no longer indicate a
20 presumption in the year that ended June 30th, 2023, is
21 that correct?

22 A. Yes, that's right.

23 Q. And then there are 7 routes where the opposite
24 occurred, there wasn't a presumption in the older data,
25 but there is a presumption in the new data, correct?

1 A. Yes, that's right.

2 Q. And the point you made in your direct examination
3 was that there were a similar number of routes that had
4 the presumption, is that a correct characterization?

5 A. Yes, that is.

6 Q. But the actual set of routes from one period to
7 another, that changed, right?

8 A. Yes, it changed, especially on the smaller routes.

9 Q. And a little less than 20 percent of the routes
10 changed from one year to another, 17.6 to be exact?

11 A. Yes, again those are smaller routes
12 disproportionately, so it's not 17 percent of
13 passengers.

14 THE COURT: Which slide are you looking at?

15 MR. CULLEY: I'm looking at Slide 28 of
16 Dr. Gowrisankaran's presentation, your Honor.

17 THE COURT: Fine.

18 Q. And you did not go back, Doctor, and do a similar
19 analysis for the four quarters that ended in, um, June
20 2020, um, and compare that to the four quarters that
21 ended in June 2021, for example, correct?

22 A. No, I did not.

23 Q. And you didn't do that for any prior period
24 actually, correct?

25 A. That's right.

1 Q. And so you can't say how this set of presumption
2 routes would have changed from one year to another in
3 any of those prior periods, correct?

4 A. That's right.

5 Q. And you also can't rule out that the list of
6 presumption routes here will change again in the next
7 year, correct?

8 A. That's right, in fact I know it will change because
9 there's been some exits and some entries.

10 Q. Okay. All right, now let's talk about some of the
11 issues with this slide as well and first let's talk
12 about routes that are being exited.

13 MR. CULLEY: Let's bring up your Slide 29.

14 (On screen.)

15 Q. And the top table, that identifies nonstop overlap
16 routes that Spirit or JetBlue will exit, um, between the
17 end of the second quarter of this year and, um, the
18 second quarter of 2024, correct?

19 A. That's right.

20 Q. But it omits exits that occurred before Q3 2023,
21 correct?

22 A. Yes. I think I testified wrongly to your last
23 question, your previous question.

24 Q. Okay, please clarify.

25 A. So exits, um, they have to not be there in, starting

1 in July of this year, and they had to have been there in
2 the 12 months preceding July of this year.

3 Q. Thank you for that clarification, Doctor.

4 MR. CULLEY: So let's put up Gowrisankaran
5 Demonstrative B, which is going to add the exits that,
6 um, Mr. Kirby testified to that occurred during the
7 course of, um, the year that ended in June 30th, 2023.

8 Q. So those were Boston to New Orleans, Austin to
9 Cancun, and New York to Tampa, does that sound right,
10 Doctor?

11 A. I don't remember the specific ones, but that sounds
12 right.

13 Q. Okay. And then Mr. Friedman also testified that
14 JetBlue had exited Cleveland to Miami, Cartagena to
15 Miami, Philadelphia to San Juan, Austin to Cancun, and
16 Miami to San Juan, correct?

17 A. A number of those basically, yes.

18 Q. So now that we've filled out that list, let's go to
19 Gowrisankaran Demonstrative C, which just we'll mark up
20 your Slide 28.

21 A. (Looks.)

22 MR. CULLEY: And I'll just give your Honor a
23 moment to get to C.

24 (Pause.)

25 MR. CULLEY: Let's go ahead and show those Spirit

1 exits, which would be on the second page of the
2 demonstrative.

3 (On screen.)

4 Q. Now the first one listed here, Dr. Gowrisankaran, is
5 Aguadilla to Miami, Florida, and you put a check mark in
6 the second column here, correct, that route?

7 A. That's right.

8 Q. And by that check mark you were indicating that you
9 still believe there's a presumption on that route?

10 A. All right, using the 2023 Q3 to 2023 Q2 data, there
11 is a presumption on it.

12 Q. And you would agree though that because Spirit has
13 exited the route, there's no longer a presumption on
14 that route, correct?

15 A. Well, yes, I agree that there's no longer a
16 presumption today, but that's not what I -- not what I
17 heard. What I heard Mr. Kirby testify to is that Spirit
18 suspended service on that route, but that they planned
19 to go back to it.

20 Q. He said they "hoped" to go back, isn't that right,
21 Doctor?

22 A. Yeah, it sounds right.

23 Q. Okay. And the second one is Aguadilla to Orlando,
24 Florida, and similarly there's no longer a presumption
25 on that route going forward, correct?

1 A. Yes, the same answer to the previous route.

2 Q. And the same with, um -- and let's add the -- sorry.

3 And the same with Fort Meyers to Hartford?

4 A. Yeah, basically the same answer. I don't remember
5 what he said about going back to that route.

6 Q. And the same for Orlando, Florida to Ponce?

7 A. Um, sure, yes.

8 MR. CULLEY: And then let's go ahead and add the
9 JetBlue exits to that route.

10 (On screen.)

11 Q. And the same answer for Aruba to Miami?

12 A. What's the question again? Just to be precise.

13 Q. The question is that you agree that there's not a
14 presumption going forward on Aruba to Miami due to
15 JetBlue's exit on that route?

16 A. I mean, yes, basically there's no presumption. If
17 they did exit since the -- in the last year then, if you
18 used today's data, there would not be -- there may not
19 be a presumption or there wouldn't be one.

20 Q. Thank you, Doctor.

21 And then again you recall we discussed
22 Mr. Friedman's testimony on the competitive change
23 summaries and on a couple additional entries that
24 occurred after those summaries.

25 MR. CULLEY: Let's go ahead and mark those in the

1 demonstrative as well.

2 (On screen.)

3 Q. And we restricted these to entries or expansions
4 that occurred during the calendar year 2023, so halfway
5 through your period. And you would agree that entries
6 that occurred halfway through your new period are not
7 fully reflected in the shares for your full-year period,
8 correct?

9 A. Sure, but the document was mostly about expansions,
10 not entries.

11 Q. They're not fully reflected in your 12-month,
12 correct?

13 A. Ask that again, I'm sorry?

14 Q. The expansions that you just mentioned and also the
15 entries, if they occurred during the year 2023, they're
16 not fully reflected in the 12 months of data, correct?

17 A. Sure, yes. Uh-huh.

18 Q. And then of course we also discussed divestitures
19 earlier.

20 MR. CULLEY: And let's add airports that are
21 marked by a divestiture to the demonstrative.

22 (On screen.)

23 Q. And again we're left with only 5 routes that are
24 untouched by a Spirit exit, a JetBlue exit, the entry
25 expansion of other carriers, or routes of a divestiture

1 endpoint, correct?

2 A. Um, according to this graph, yes. Uh-huh.

3 Q. And a number of these I notice involve Orlando,
4 Florida. Do you notice that as well, Doctor?

5 A. (Silence.)

6 Q. All but one? Two? All but one?

7 A. Oh, sure, you mean the ones that you didn't color?

8 Q. Right.

9 A. Yes.

10 Q. And we heard some testimony about the Orlando
11 International Airport from Mr. Wells earlier. He
12 testified that Allegiant had recently entered into
13 Orlando National Airport, correct?

14 A. That sounds right, yes.

15 Q. And you also -- one of these is Cancun to Orlando.
16 You also heard Mr. Wells' testimony that Allegiant is
17 waiting on the Department of Transportation to approve
18 its joint venture with Viva Airlines, correct?

19 A. I don't remember that, but, yeah, it sounds right.
20 But I'm not sure.

21 Q. It sounds right to you?

22 A. Sure.

23 Q. And after approval of that application, Mr. Wells
24 testified that Allegiant could begin operating a service
25 between Mexico and the United States within 3 months,

1 right?

2 A. Again I don't remember, but I don't see any reason
3 to think that it's --

4 Q. Would you like to take a look?

5 A. If you'd like.

6 MR. CULLEY: Can we bring up the trial transcript
7 for November 15th. And Tab P, Pages 2412 through 2514.

8 (On screen.)

9 THE COURT: Tab what?

10 MR. CULLEY: Tab P in the binder, your Honor.

11 THE COURT: P. All right.

12 MR. CULLEY: And we're looking at Page 24.

13 (On screen.)

14 Q. And does this refresh your memory about Mr. Wells'
15 testimony, Doctor?

16 A. Yes, it does.

17 Q. And he testified that Allegiant could begin
18 operating between Mexico and the United States within 3
19 months, correct?

20 A. Yes, he testified that if this, um, joint venture
21 were approved, that would happen.

22 THE COURT: Mr. Culley, I know you're just getting
23 rolling, but sometime I'm going to need to take a
24 recess. Is this a good time?

25 MR. CULLEY: I think this would be a great time to

1 take a morning recess.

2 THE COURT: We'll take the morning recess at this
3 time until 11:15. We'll stand in recess.

4 (Recess, 10:45 a.m.)
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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes
before Judge William G. Young, on Monday, November 20,
2023, to the best of my skill and ability.

/s/ Richard H. Romanow 11-20-23

RICHARD H. ROMANOW Date